

TO: Village Council

FROM: Village of Key Biscayne Land Acquisition Committee

RE: Interim Report and Recommendations Regarding Establishment and Funding of
Village of Key Biscayne Land Trust

DATE: June 22, 2010

INTRODUCTION

The Village of Key Biscayne Land Acquisition Committee has made substantial initial progress in evaluating acquisition solutions to meet recreational and open space needs. Having identified possible acquisition sites, and having assessed preliminarily their relative pros and cons, we have focused on debt cap availability and debt service projections based on projected FY 2011 assessed value. Based on the financial projections we have reviewed, and considering land acquisition purposes and other possible capital needs, we determined to offer this interim report, to inform the Council of actions that can be taken now, at the beginning of its annual budget process, to make the land acquisition effort more viable and efficient.

Recommendations, in sum:

The decline in overall assessed value means that tax revenues remaining after general fund expenditures and fixed debt service will not support new debt service for land acquisitions. We therefore recommend that these actions be taken immediately:

1. The Council should create immediately a Village of Key Biscayne Public Land Trust (the “Land Trust”). The purpose is to accumulate and preserve dedicated funds to acquire land within Village borders for park and recreational purposes.
2. The Land Trust should be funded initially, immediately, by presently-allocated monies for park and recreational purposes. This would include, without limitation, \$1 million

that we understand has been allocated as a “land acquisition reserve” under the current Capital Improvements Plan, and whatever sum has been allocated but unexpended for Calusa Park improvements pursuant to pending agreements with the Crandon Park trustees. We recommend that the Land Trust funding also include the \$7 million so-called “Sonesta voluntary covenant”, which would be due upon issuance of a certificate of occupancy. We conceive that the dedicated purpose of the Land Trust funds, for park and recreational purposes only, would be irrevocable and insulated from change by future Councils.

3. During the budget workshop process, we recommend that the Council project a minimum of .24 mills, in excess of the current 3.2 millage rate, to allow for debt service on at least \$20 million of new borrowings in 2011. The Council may wish to consider a Village-wide special assessment in addition to a millage increase. But without one or the other or both, there can be no borrowing in the coming fiscal year. Land acquisitions or other capital projects will be forestalled.

(a) This level of borrowing (up to \$20 million of availability) is within the present debt cap and would enable meaningful progress in the coming fiscal year on a land acquisition strategy.

(b) The recommended millage increase corresponds to a tax increase of approximately \$224 per property taxpayer, assuming a \$1 million average assessed value. See the debt analysis chart prepared by the Village Manager, attached as Schedule 1. The resulting overall millage rate of 3.44 would place Key Biscayne at the very low end of established millage rates among Miami-Dade County municipalities.

4. To be clear, we are not at this time recommending specific acquisitions of specific properties. At this time, we are only recommending immediate and necessary steps to enable the

acquisition strategy to move forward, while preserving the current debt cap. But, to illustrate a range of estimated costs associated with possible acquisitions that have been identified thus far, we have attached as Schedule 2 a list of possible sites, including acreage, assessed value and a market value estimate. Attached as Schedule 1 is a listing of mills needed to enable debt service at various levels of borrowing, together with the tax amount per capita (assuming a \$1 million average assessed value) associated with each level of millage.

Rationale, in sum:

1. The establishment and funding of the Land Trust would further the long-standing, recently reaffirmed strong community consensus that land should be acquired to meet identified community needs (active recreation and open space), thus addressing concurrency requirements by means of functional solutions, rather than merely designating the beach or other acreage for sake of concurrency compliance without addressing community needs.

2. The Land Trust suggestion recognizes that a dedicated source of funds must be identified and made available in order to fulfill this community consensus.

3. The Land Trust would guarantee Key Biscayne taxpayers that funds designated for the purchase of public land could not be used for any other purpose.

4. A funded Land Trust would allow acquisition negotiations to proceed with credibility, and decisions to be made efficiently and nimbly, in a low-interest rate, value-declined buyer's market, as opportunities arise.

5. The recommended level of initial trust funding (assuming a .24 increase in millage as the dedicated revenue source) is the absolute minimum we project to enable debt service for acquisitions, staying within but maximizing borrowing availability under the debt cap and assuming reasonable and customary market terms.

6. The establishment and funding of the Land Trust will enable the Village to demonstrate meaningful progress in response to South Florida Regional Planning Council and DCA expectations relative to a concurrency deficit cure plan.

7. In sum, we see a millage increase as the only sure way to allow for land purchases, at least in the coming year. We think it clear that the public and Council have spoken forcefully, repeatedly, for land acquisitions to address recreational and open space needs, and we note that the Council affirmatively rejected a “count the beach” alternative. We see in-Village land acquisition both as feasible and as the ideal solution to meet these needs. There are interested sellers and strategic opportunities now, and prices and rates are historically low. In-Village solutions would confer important long-term benefits and change positively the quality of life for Key Biscayne residents, at a relatively minimal cost to taxpayers. In fact, the level of recommended funding deriving from a .24 millage rate increase can be accomplished with an impact of less than 1% on the average residential property tax bill.

Timing:

Unless by July 6th, a millage component supporting a dedicated funding source is included in the proposed budget, no acquisitions can possibly occur in 2011, unless grants or other funding sources or land dedication possibilities can be identified, or unless a special assessment is achieved. Including the .24 mills revenue source in the proposed budget will allow for public and Council consideration during the three-month budget process. This will afford a full public airing on a subject that is likely to be controversial, before a final decision on millage need be made. If the dedicated revenue source is not included in the July 6 proposed budget, it effectively cannot be added during the budget process, and the land acquisition effort will be stalled for another year.

Alternatives:

If the land acquisition effort is stalled, the immediate alternatives shrink to: (a) lighting the K-8 Center Field and the balance of the Village Green to support expanded ball fields use, (b) the Calusa Park redevelopment concept, (c) Virginia Key and/or Mast utilization, and (d) continued or renewed negotiations relative Crandon Park and possibly Bill Baggs. The first two alternatives have minimal effect on the ball fields deficiencies and are problematic in other respects. Virginia Key and Mast are likely to require a long-term lease commitment and substantial development costs for non-exclusive and less-than-comprehensive solutions, outside-the-Village. Crandon Park is a necessary (as a hedge if nothing else) but unpromising negotiation, and Bill Baggs is an unlikely long-shot.

Competing Needs:

This report pertains only to land acquisitions for recreational and open space purposes. That is the mandate of our committee, but we note that there are a number of unfunded capital items. Without a millage increase or special assessment, tax revenues will not be sufficient to enable debt service for any unfunded capital project, even within the debt cap.

I. FACTUAL BACKGROUND: COMMUNITY CONSENSUS

We suggest that the Council review this recommendation in the light of recent history. Years ago, the Village set its level of service standard at 2.5 acres of park land for every 1,000 residents. We have had a deficit for years. For years, the Village has identified functional needs to meet concurrency purposes. This translates to ball fields, other active recreational space and open space. This features in the Master Plan and in the 2020 Vision Plan. Recently, Village staff suggested, and some residents and Council members agreed, that one method of satisfying the requirement would be to count the Village's beaches and bike lanes as park land for concurrency

purposes. Doing so would make it unnecessary to acquire more land, at least for sake of concurrency compliance (putting aside the still-unmet functional needs). Proponents of the suggestion noted that other beachfront communities had employed this method.

This suggestion was discussed during the 2009 EAR concurrency deliberations, and rejected. It was revisited nevertheless in a number of public meetings, which produced clear and overwhelming public disapproval. Council then agreed unanimously not to count beaches and bike lanes for concurrency purposes. The natural corollary to this decision was that it would be necessary for the Village to secure additional land to meet concurrency requirements.

II. LAND ACQUISITION WILL REQUIRE FUNDING FROM A DEDICATED SOURCE OF REVENUE

In response to the evident public consensus and corresponding need to acquire land, on March 16, 2010, the Council created this Committee to review the Village's previous efforts toward land acquisition, examine financing options, review land acquisition options, and identify current and future properties for acquisition. The Committee met on March 15, April 5, May 5, June 10, June 17, and June 21, 2010.

Several simple predicates are clear. The Village has decided to acquire land. Acquiring land will cost a substantial amount of money. The Village's current budget does not contain a surplus to fund land purchases.

We are reminded of the pivotal courtroom scene in the movie, "A Few Good Men." The military prosecutor played by Tom Cruise is cross-examining the officer played by Jack Nicholson and demands, "I want the truth!" Nicholson's character replies, "You can't handle the truth!"

The immediate question for the community and its political leadership is what to do in response to the truth. The truth is this: To achieve what appears to be the overwhelming and

repeatedly reaffirmed community consensus to acquire land for functional needs, thus meeting concurrency requirements, the Village simply must identify a dedicated source of revenue. We see no other way forward. Special assessments may supplement, but will not replace, a dedicated revenue source. The prospect of having to approve special assessments will not permit flexibility as opportunities arise or credible negotiations. We will continue to explore grants, matching funds and other funding sources, but we think a dedicated fund at the ready will be required in order to negotiate and to take advantage of any possible alternative or supplemental funding programs.

III. THE LAND TRUST AS A VEHICLE FOR ACQUISITION

Our Committee quickly reached our own consensus that the most efficient and effective way to provide for acquisitions would be for the Village to create the Land Trust. We recommend that the Village budget a minimum of .24 mills to allow for the acquisition of at least \$20 million to pay for selected acquisitions. \$20 million is within the debt cap and at this stage of our analysis, we believe that amount is adequate to purchase (and possibly prepare for use) some of the potential sites we have identified. This assumes, of course, that the dedicated revenues are not allocated to other capital items, or if otherwise allocated, that a Land Trust balance is in any event sufficient to proceed incrementally.

There are a number of reasons for our Land Trust recommendation. First, we believe it represents an honest and transparent response to an important community demand. The community has made it clear that it does not want to meet concurrency requirements through contrivances that do not address our real needs. This means we must acquire land. Land costs money. The test of political leadership is to provide solutions that respond to the will of the people, and to provide the people with the simple truth of the price of the exercise of their will.

Second, we believe that the basis for the community's demand is real and unlikely to change. There appears to be an ever-growing population of young families, with kids in sports programs, and a growing population of seniors who desire facilities consistent with their needs and desires, including open space – a place to sit and meet and enjoy the outdoors in the company of friends.

Third, we believe that the establishment and funding of the Land Trust will provide Key Biscayne taxpayers with an assurance that their taxes will not be misspent, used to grow government, hire bureaucrats, acquire equipment or for any purpose other than the acquisition of land. We observe that throughout the history of our little Village and our nation, land acquisition has generated the staunch opposition of a minority and the approval of nearly everyone else (including, after the purchase, the opposing minority). From the Louisiana Purchase to Alaska to the National Parks, from New York's Central Park to our own Village Green, responsible land acquisition has always justified and rewarded those with vision. It seems self-evident that no one regrets decisions to acquire public land, after the acquisition. The establishment and funding of the Land Trust would provide a dedicated source of revenue that could not be invaded for other purpose.

Fourth, by having a funded Trust in place, acquisition decisions could be made efficiently and nimbly in a rapidly evolving marketplace. Without a funding source, whoever would be negotiating on behalf of the Village would be doing so in a vacuum. It will be impossible to negotiate with a seller, and then ask the seller to wait while the Village explores whether and how to pay for a purchase.

Fifth, we think it prudent not to defer real progress until later. Our concurrency compliance / growth management responsibilities have become increasingly conspicuous to the

Regional Planning Council and DCA. Prices and rates are low and owners are willing to negotiate targeted and strategic acquisition opportunities. To move on the opportunities, we must make a funding decision. That decision has a cash-effect on our residents. It is certainly true that market conditions have declined overall and that many people are affected, including our residents. Its also true that any direct or indirect tax increase is always controversial; more so in a tight-cash economy. Its tempting to think there will be a better time. There won't be.

Finally, we believe the recommended level of funding is affordable. Because playing fields are necessary, the Village will require a meaningful amount of acreage on a barrier island where land is scarce and expensive. We have concluded that \$20 million – within the debt cap - is an amount large enough at least to begin addressing our needs, and to make a meaningful positive impact on our quality of life.

At the same time, the financing amount we are recommending can be secured at a relatively minimal cost to the average homeowner. Leveraging a slight millage increase for \$20 million of financing will still leave the Village under the debt cap. The creation of the Land Trust will allow the Village to explore matching funds and grants to enhance our ability to secure other sources of funding. Assuming we are unable to secure other sources of revenue, the dedication of .24 mills to the Land Trust represents an impact of less than 1% to the average residential property tax bill. And, as opposed to 83% of the property taxes levied on Key Biscayners, all of the dedicated funds generated to the Land Trust would inure to the benefit of the Island and its residents.

By including the .24 mills dedicated revenue source in the initial proposed budget, the Council would not be committed to ultimately accept the millage increase in the final budget. It

would merely be a vehicle to allow the community to understand “the truth”, and to determine whether we can “handle it.”